IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2282 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARVINKUMAR SOMNATH PANCHAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2282 of 1989

MS THAKKAR FOR MR YOGESH S LAKHANI for Petitioner No. 1

MR UDAY BHATT, AGP, for Respondent No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/01/2003

ORAL JUDGEMENT

1. The petitioner came to be appointed as Sipoy, at Sub-Jail, Mehsana, by virtue of an order dated September 2, 1987. He underwent Jail Staff Training from 4.12.1987 to 4.4.1988, as per certificate issued by the Jail Staff Training School, Ahmedabad (Anexure-B). He was again sent for training on the 18th December, 1988, at S.R.P. Training Centre, Choki (Sorath). It is alleged that, thereafter, he, under one pretext or the other, avoided the training and absconded from the training camp and, after considering all relevant aspects, the superior authority, i.e. the Superintendent, Sub-Jail, Mehsana, issued a notice on 4.12.1989, intimating the petitioner

that because of his conduct of avoiding training and not reporting on duty along with a certificate of fitness, his services are to be terminated with effect from two months thereafter, in view of the decision taken by the superior officers communicated to him by letter dated the 31st January, 1989. The petitioner has, approached this Court with this petition, on being aggrieved by the said notice, seeking the following main reliefs :-

"(A) Issue a writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the impugned notice dated 4.2.1989 at Annexure 'G' issued by respondent No.3 holding it as unjust, arbitrary, penal, against the principles of natural justice and equity, violative of constitutional provisions and unfair.

(B) Pending admission and till final disposal of the petition, direct the respondent authorities to take the petitioner on duty and not to discharge, discontinue, or terminate the services of the petitioner thereafter."

2. Initially, ad-interim relief was granted in favour of the petitioner to the effect that he be not terminated pursuant to the notice dated 4.2.1989 (Annexure-G) and the said ad-interim relief came to be confirmed subsequently on April 20, 1991 by this Court.

3. Learned Advocate, Miss Thakkar, appearing for the petitioner, submitted that the petitioner is sought to be terminated from services on false charge of indiscipline and avoidance of training. In fact, he was not well and his sickness is reflected and indicated by medical certificates, which were sent by him to the authorities concerned at the relevant time, as can be seen from annexures to the petition. She submitted that the impugned noice is served on basis of an order passed by the office of the Inspector General of Prison. No audience was given to the petitioner before passing such order. The notice in question also does not reflect that any such audience is given. She submitted that the medical certificates have been ignored by the authority and, therefore, the notice may be quashed. Ms. Thakkar makes a statement at the Bar that the petitioner is still in service.

4. Learned Assistant Government Pleader, Mr. Bhatt, opposes this petition. He submitted that the petitioner has behaved in an indisciplined manner and, therefore,

action was required to be taken. He, therefore, submitted that the petitioner may be dismissed.

5. No affidavit-in-reply is filed by respondent authorities.

6. Having regard to rival side contentions, it appears that the petitioner had health problem on the 23rd December, 1988, within days of his being sent to training and he had applied to the Principal of S.R.P. Training Centre, Choki, Sorath (Annexure-C). There is a medical certificate issued by Civil Surgeon dated the 23rd December, 1988 (Annexure-D). He has also written to Inspector General of Prisons on the 31st December, 1988, (Annexure-D), indicating that he is not keeping good health and that he may be permitted to appear on duty at the Sub-Jail, Mehsana. On the 24th January, 1989, he has written to the Principal of S.R.P. Training Centre, Choki (Sorath) as well as the Inspector General of Prisons regarding his ill-health supported by a medical certificate issued by Dr. Chaudhary. The medical certificate indicates that he was suffering from acute viral hepatitis and hyper-tension.

7. In this background, if the notice is seen, even after a close scrutiny, this Court is at loss to find out any indicator to show that the petitioner was heard by the concerned authority before deciding to terminate his services after giving notice. It is amply clear that the termination is not termination simplisiter. The termination of service is on account of his alleged conduct of avoidance and not reporting on duty. No departmental proceedings seem to have been initiated. No affidavit-in-reply is filed by the respondents to challenge or controvert the say of th petitioner.

8. The proposed action of termination of service of the petitioner is, therefore, violative of Article 311 of the Constitution of India. The petition, therefore, deserves to be allowed and the same is allowed. The notice Annexure-G is hereby quashed and set aside. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

gt